

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE GOVERNMENT OF THE VIRGIN
ISLANDS, BUREAU OF INTERNAL
REVENUE,

Plaintiff,

v.

WILLIAM LANSDALE, MARIANTHI
LANSDALE, LA ISLA VIRGEN, INC.,
MARINA PACIFIC OIL COMPANY, and
LONESOME DOVE PETROLEUM COMPANY

Defendants

Civ. No. 1998-243

ATTORNEYS:

Richard M. Prendergast, Esq.

Asst. Attorney General

St. Croix, U.S.V.I.

For the plaintiff

Gregory H. Hodges, Esq.,

Chad C. Messier, Esq.,

St. Thomas, U.S.V.I.

For the defendants.

MEMORANDUM

MOORE, J.

This matter is before the Court on the Government of the Virgin Islands, Bureau of Internal Revenue's ["government" or the "VIBIR"] motion for leave to file an amended complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court will grant the motion.

I. PROCEDURAL BACKGROUND

This case primarily involves the government's attempt to reduce the unpaid income tax assessments¹ of La Isla Virgen, Inc., ["La Isla Virgen" or "LIV"] to a judgment against it, against its transferees and successors-in-interest, Lonesome Dove Company ["Lonesome Dove"] and Marina Pacific Oil Company ["Marina Pacific"], and against William and Marianthi Lansdale [collectively the "Lansdales"] personally.

The VIBIR is the agency of the Government of the Virgin Islands charged with administering and enforcing income tax laws in the U.S. Virgin Islands. La Isla Virgen, Lonesome Dove, and Marina Pacific [collectively the "Lansdale corporations"] are a series of successor corporations which were solely owned and operated by the Lansdales.

On December 1, 1998, the VIBIR filed its complaint against the defendants. On February 25, 2000, this Court heard argument on the defendants' motion to dismiss and for summary judgment and took the matter under advisement. On May 31, 2000, the VIBIR filed its motion for leave to file an amended complaint. The parties have yet to conduct discovery in this case.

¹ For tax years ending February 1982, 1983, 1984, 1985, and 1986.

II. DISCUSSION

Once a pleading responsive to the complaint is served, a plaintiff may only amend the complaint by leave of the court. See Fed. R. Civ. P. 15(a). This leave "shall be freely given when justice so requires," although the decision to grant leave is left solely to the discretion of the trial court. See *Foman v. Davis*, 371 U.S. 178, 182 (1962). A district court may deny leave to amend on grounds such as undue delay, bad faith or dilatory motive, undue prejudice to the opposition, repeated failures to correct deficiencies with previous amendments, and futility of the amendment. See *Anderson v. Government of the Virgin Islands*, 39 V.I. 235, 240 (D.V.I. 1998) (citing *Riley v. Taylor*, 62 F.3d 86, 90 (3d Cir. 1995)). Finding that none of these grounds are present to warrant denying the motion, the Court will grant the motion to amend.

The VIBIR did not bring its present motion with undue delay. Eighteen months separate the filing of the original complaint and the government's motion to file its amended complaint. Although the length of time itself is not dispositive, the Court notes that it granted the government's motion to amend its complaint in a companion case, *VIBIR v. Chase Manhattan*, Civ. No. 1993-093, some five years after the original complaint was filed (see *id.*, Order of May 22, 1998), but did not grant a subsequent motion to

file a second amended complaint, when the request came seven years after the original complaint was filed due to the prejudice resulting from the government's undue delay. In this case, the delay is much less than five years, and any prejudice is attenuated by the fact that no discovery has yet occurred in this case.

The defendants argue that the government's motion is part of a bad faith design to harass them. As evidence of their assertion, they note that the length of the proposed amended complaint is nearly quintuple that of the original complaint, increasing it from ten pages to forty-six pages, much of it new facts and legal theories, and a new Count Five. The defendants' observations about the amended complaint are true -- it is unwieldy -- however, this does not support an inference of harassment. In fact, most of the added verbiage of the amended complaint consists of specific factual allegations not ordinarily required to state a claim under Rule 8(a), yet which put the defendants on notice of the government's case. Further, these specific factual allegations were lifted verbatim from the VIBIR's statement of undisputed facts, with which defendants are already familiar, so their inclusion in the amended complaint is neither surprising nor prejudicial.

The defendants are correct in their assertion that the amended complaint introduces new theories of liability, but there

is nothing to prevent the plaintiffs from disclosing in the complaint their legal theories of the case.² Rule 8(a) does not require that a complaint set out legal theories, rather it must set out a short and plain statement of the claim. See, e.g., *Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041 (7th Cir. 1999); *Crull v. GEM Ins. Co.*, 58 F.3d 1386 (9th Cir. 1995). Since these theories are not required, they do no prejudice to the defendants, but instead may help to put defendants on notice of the government's case.

The novel theories in the complaint themselves do not establish new claims. For the most part, these novel theories support the same four claims as were contained in the original complaint. The only novel claim apparent in the amended complaint appears to be one for fraud, which the government

² The new theories include:

- (1) Derivative transferee liability, a theory of liability that states that shareholders or distributees of corporate assets subject to an unpaid tax liability do not need to be independently assessed the tax before the government may require an accounting by the shareholders or distributees and assess them for the unpaid tax liability. This theory seems inherent in the claims brought by counts II and IV of the original complaint.
- (2) Use of a corporate entity to evade a statute or violate public policy. This appears to be nothing more than an alter ego/veil-piercing theory, and as such, falls within the original scope of count III.
- (3) Trust fund doctrine makes the creditors of a corporation the beneficiaries of a trust consisting of the corporate assets by granting creditors an equitable right of recovery against shareholders who take assets from a dissolving corporation.
- (4) Constructive trustee liability appears to be very similar to the trust fund doctrine.
- (5) Fraudulent conveyance is a theory of recovery based on the conveyance of property or assets from an insolvent entity with intent to hinder, delay, or defraud creditors.

explicates through its theory of fraudulent conveyance and an abundance of factual detail. See Fed. R. Civ. P. 9(b) ("[A]verments of fraud . . . shall be stated with particularity.").

The defendants' other arguments are also unpersuasive. The alleged violation of Rule 15.1 of the Local Rules of Civil Procedure would not serve as a basis for denying the government's motion, even if the government had not corrected its proposed amended complaint, which it claims it did. See LRCi 15.1 ("A failure to comply with this rule is not grounds for denial of the motion."). Defendants' argument that the amendment is futile goes to the merits of the defendants' motion to dismiss and for summary judgment, which this Court will address shortly.

III. CONCLUSION

The Court will grant the VIBIR's motion to file its amended complaint.

ENTERED this 31st day of January, 2001.

For the Court

_____/s/____

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Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By: /s/
Deputy Clerk

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For the defendants.

ORDER

MOORE, J.

For the reasons set forth in the foregoing Memorandum of
even date, it is hereby

ORDERED that the VIBIR's motion for leave to file an amended
complaint is **GRANTED**.

ENTERED this 31st day of January, 2001.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

**By: _____/s/_____
Deputy Clerk**

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